

RUSSELL TEWKSBURY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOFORIT ENTERTAINMENT, LLC,       )  
    Plaintiffs,                        )  
  )  
v.                                        )  
  )  
DIGIMEDIA.COM L.P.,                ) Case No. 3:08-cv-02011-D  
CYBERFUSION.COM L.P.,                )  
HAPPYDAYS, INC.,                    )  
DIGIMEDIA.COM MANAGEMENT INC.,)   
and                                    )  
SCOTT DAY,                            )  
    Defendants.                        )

\*\*\*\*\*  
                                  ORAL AND VIDEOTAPED DEPOSITION OF  
                                  RUSSELL TEWKSBURY  
                                  OCTOBER 14, 2009  
                                  VOLUME I  
\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF RUSSELL TEWKSBURY,  
produced as a witness at the instance of the Defendants,  
and duly sworn, was taken in the above-styled and  
numbered cause on the 14th day of October, 2009, from  
9:06 a.m. to 2:51 p.m., before April R. Eichelberger,  
CSR in and for the State of Texas, reported by machine  
shorthand, at the law offices of Shore Chan Bragalone,  
LLP, 901 Main Street, Suite 3300, Dallas, Texas,  
pursuant to the Federal Rules of Civil Procedure and the  
provisions stated on the record or attached hereto.

RUSSELL TEWKSBURY

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

Mr. Corey D. McGaha  
PATTON ROBERTS PLLC  
400 Century Plaza  
2900 St. Michael Drive  
Texarkana, Texas 75503  
(903) 334-7000  
(903) 334-7007 (Fax)

Mr. Marshall C. Wood  
NORTON & WOOD, L.L.P.  
315 Main Street  
Texarkana, Texas 75501-5604  
(903) 823-1321  
(903) 823-1325 (Fax)

FOR THE DEFENDANTS:

Mr. Mack J. Morgan III  
Mr. Drew T. Palmer  
CROWE & DUNLEVY P.C.  
20 North Broadway, Suite 1800  
Oklahoma City, Oklahoma 73102-8273  
(405) 235-7700  
(405) 239-6651 (Fax)

ALSO PRESENT:

Chris Birge, Videographer

RUSSELL TEWKSBURY

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## EXHIBIT LIST

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2	ICG Expert Report, September 1, 2009 CONFIDENTIAL	77
3	Plaintiff GoForIt's Answers and Objections to Defendant Cyberfusion.com, L.P.'s First Set of Interrogatories	105
4	Alexa documents GFI 899-940 GFI 1664-1667	142
5	Defendant Answer, Counterclaim and Third Party Complaint	156

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P R O C E E D I N G S

THE VIDEOGRAPHER: This deposition is being taken in Case Number 3:08-CV-02011-D filed in the United States District Court for the Northern District of Texas Dallas Division in the case of GoForIt Entertainment, LLC, versus Digimedia.com LP, Cyberfusion.com LP, HappyDays, Inc., Digimedia.com Management, Inc., and Scott Day.

My name is Chris Birge, the videographer. The court reporter is April Eichelberger of HG Litigation Services, Dallas, Texas.

We're here today to take the deposition of Russell Tewksbury, acting as designated corporate representative for GoForIt Entertainment, LLC. Today's date is October 14th, 2009. This deposition is being taken at 901 Main Street, Dallas, Texas. We're on the record at 9:06 a.m.

Will counsel please state their appearances for the record.

MR. WOOD: Marshall Wood on behalf of plaintiff.

MR. McGAHA: Corey McGaha on behalf of the plaintiff.

MR. PALMER: Drew Palmer on behalf of the defendants.

RUSSELL TEWKSBURY

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1 MR. MORGAN: Mack Morgan on behalf of  
2 defendants.

3 THE VIDEOGRAPHER: At this time, will the  
4 court reporter please swear in the witness.

5 RUSSELL TEWKSBURY,  
6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. PALMER:

9 Q. Mr. Tewksbury, thank you for being here today.  
10 My first question is real standard. Can you just state  
11 your name for the record.

12 A. Russell Baird Tewksbury.

13 Q. And what's your address?

14 A. 190 Escambia Lane, Number 203, Cocoa Beach,  
15 Florida, is my personal address; and the corporate  
16 address is in Las Vegas.

17 Q. Okay. Mr. Tewksbury, have you ever been  
18 deposed before?

19 A. I believe two times.

20 Q. Okay. And in what cases were you deposed in?

21 A. Personal cases, I was in an automobile  
22 accident.

23 Q. So nothing to do with this particular case?

24 A. No, sir.

25 Q. Okay. I'm sure in those cases your attorneys

RUSSELL TEWKSBURY

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1 at least once an hour because of a medical -- he needs  
2 to get up and walk around.

3 MR. PALMER: Okay.

4 MR. WOOD: Thrombosis issue.

5 MR. PALMER: Okay. No problem. And if  
6 for some reason, we're approaching that hour, feel free  
7 to remind me yourself.

8 Q. (BY MR. PALMER) As I ask you questions and  
9 you provide answers, if I ask you a question and you  
10 don't understand it, don't answer the question. Tell me  
11 that you don't answer [sic] the question, and I'll try  
12 to ask it in another way that you do understand.

13 If -- from time to time, your attorneys  
14 are going to object to questions. That's fine. They're  
15 doing their job. You still need to answer the question  
16 unless your attorney advises you not to answer the  
17 question. So we'll let him state his objection on the  
18 record. We'll record it, and then you can answer the  
19 question.

20 Also -- and this is sort of novel -- I  
21 don't have a hand watch, so from time to time, I may  
22 look at my phone for the time so I know we can take a  
23 break whenever we need to, okay?

24 Can you describe your relationship to the  
25 plaintiff GoForIt?

RUSSELL TEWKSBURY

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1           A.    I am the owner of the company and managing  
2    member.

3           Q.    Okay.  Are you an officer of the company?

4           A.    I believe so.

5           Q.    Okay.  How many employees does GoForIt have?

6           A.    None.  Excuse me.  I need to clear my throat.  
7    Pardon me.

8           Q.    Are you not an employee of the company?

9           A.    No.

10          Q.    Okay.  What form of organization is GoForIt?  
11   Is it a corporation?

12          A.    It's a limited liability corporation.

13          Q.    Are you the sole member?

14          A.    Yes, sir.

15          Q.    And the sole shareholder?  You're the entire  
16   nut and bolts of the operation?

17          A.    Yes, sir.

18          Q.    Okay.  Can you explain for me what GoForIt  
19   does?  How does it make money?  How does it operate?  
20   Where are its resources, principal place of business,  
21   those types of things.

22          A.    Those are five questions.  GoForIt is an  
23   internet website guide and directory database on the  
24   internet.  As far as making money, we have affiliate  
25   relationships or have had affiliate relationships with

RUSSELL TEWKSBURY

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1 attorneys and law firms.

2 Q. And MarketWorks Corporation?

3 A. Was just a marketing consulting firm.

4 Q. And I think you said earlier that  
5 MarketWorks, LLC, still exists?

6 A. Yes, sir.

7 Q. Does MarketWorks -- does MarketWorks  
8 Corporation still exist?

9 A. No, sir.

10 Q. So the only surviving entities now are GoForIt  
11 Entertainment, LLC, and MarketWorks, LLC?

12 A. Yes.

13 Q. Okay. And do you transact any business under  
14 your own name as a sole proprietorship?

15 A. Money that comes from -- that is GoForIt  
16 related transfers to me personally. In other words,  
17 GoForIt Entertainment doesn't have a bank account, so I  
18 think, if I'm answering that correctly, then yes, that  
19 would be me personally.

20 Q. So the profits that GoForIt -- or the revenue  
21 that GoForIt Entertainment receives goes into your  
22 personal bank account?

23 A. That is correct.

24 Q. Okay. These -- are there any other  
25 entities -- well, strike that.

RUSSELL TEWKSBURY

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1 first-level subdomain or did at one point. And I know  
2 many that use GoForIt as a subsequent domain even to  
3 this day. But if what you're asking me is is it a  
4 second-level domain plus a top-level domain as I see  
5 these here, these do not use the term "GoForIt" in that  
6 combination.

7 Q. So the first-level domain and the second-level  
8 domain, you're not aware of any of those that include  
9 the term "GoForIt"?

10 A. A top-level domain and a second-level domain,  
11 of what I've seen in Exhibit A and B, do not have the  
12 words "GoForIt" in it.

13 Q. Is there -- when a domain name is registered  
14 with the registrar, is there anything other than the  
15 top-level domain and the second-level domain that's  
16 registered?

17 A. I don't believe so.

18 Q. Okay.

19 A. That's why it goes to my comment I said  
20 earlier, that it's kind of understood that it's the  
21 registrant that controls all subsequent subdomains.  
22 That's why I said source of origin.

23 Q. Of the terms that are listed there in  
24 Exhibit A and Exhibit B, are any of those confusingly  
25 similar with the GoForIt trademark?

RUSSELL TEWKSBURY

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1 traveling to Massachusetts to do that.

2 Q. Okay. How can -- frequency, how much time do  
3 you spend doing that? How many video productions will  
4 you do in a year?

5 A. Not much.

6 Q. In 2008 do you know how many you did?

7 A. I don't know that we did any.

8 Q. Do you remember if you did any in 2007?

9 A. I'd have to go back and look.

10 Q. Okay. Are you aware that -- if you advertise  
11 those services at all separate from goforit.com?

12 A. Have we advertised them separately from  
13 goforit.com?

14 Q. Have you taken out an ad in a magazine,  
15 GoForIt does audio and video production?

16 A. No.

17 Q. Okay. Have you ever done that?

18 A. Not that I'm aware of.

19 Q. Okay. Have you ever advertised GoForIt's  
20 audio and video production in any form?

21 A. Aside from being listed in our trademark, you  
22 mean?

23 Q. Right. Aside from being listed on your  
24 trademark registration.

25 A. Verbally.

RUSSELL TEWKSBURY

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1 Q. Okay. And how does -- how does that take  
2 place?

3 A. Verbally.

4 Q. Meaning --

5 A. I don't understand your question.

6 Q. Well, when would you verbally advertise audio  
7 and video distribution services in connection with the  
8 GoForIt trademark?

9 A. If there was an opportunity for us to make  
10 money doing it, then it would come up in conversation.  
11 I guess that's the best way to explain it.

12 Q. Are people contacting you because they know  
13 that GoForIt does audio and video distribution, or are  
14 they contacting you because they know that Russell  
15 Tewksbury does audio and video distribution?

16 MR. WOOD: Objection, form.

17 A. It depends on who's contacting me.

18 Q. (BY MR. PALMER) Do you know anyone that's  
19 ever contacted you and said I'd like GoForIt to produce  
20 or distribute my audio or video recording?

21 A. I don't -- well, using Butch as an example, I  
22 don't know if he was calling me for me or if he was  
23 calling me for GoForIt because he knows that I do that  
24 with GoForIt. GoForIt was mentioned in the  
25 conversation. They specifically mentioned GoForIt in

RUSSELL TEWKSBURY

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GOFORIT ENTERTAINMENT, LLC, )  
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v. )

DIGIMEDIA.COM L.P., ) Case No. 3:08-cv-02011-D  
CYBERFUSION.COM L.P., )  
HAPPYDAYS, INC., )  
DIGIMEDIA.COM MANAGEMENT INC., )  
and )  
SCOTT DAY, )  
Defendants. )

REPORTER'S CERTIFICATION  
DEPOSITION OF RUSSELL TEWKSBURY  
OCTOBER 14, 2009

I, April Eichelberger, Certified Shorthand Reporter  
in and for the State of Texas, hereby certify to the  
following:

That the witness, RUSSELL TEWKSBURY, was duly sworn  
by the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

That the deposition transcript was submitted on  
10/23/09 to the witness or to the attorney  
for the witness for examination, signature and return to  
me by 11/22/09;

That the amount of time used by each party at the  
deposition is as follows:

HG LITIGATION SERVICES  
HGLITIGATION.COM

APP 258

RUSSELL TEWKSBURY

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1 MR. PALMER....4 hours, 11 minutes

2 MR. WOOD.....0 minutes;

3 That pursuant to information given to the deposition  
4 officer at the time said testimony was taken, the  
5 following includes counsel for all parties of record:

6 FOR THE PLAINTIFFS:

7 Mr. Corey D. McGaha, Mr. Marshall C. Wood

8 FOR THE DEFENDANTS:

9 Mr. Mack J. Morgan III, Mr. Drew T. Palmer

10 That \$ \_\_\_\_\_ is the deposition officer's charges  
11 to the Defendants for preparing the original deposition  
12 transcript and any copies of exhibits;

13 I further certify that I am neither counsel for,  
14 related to, nor employed by any of the parties or  
15 attorneys in the action in which this proceeding was  
16 taken, and further that I am not financially or  
17 otherwise interested in the outcome of the action.

18 Certified to by me this 23 day of  
19 October, 2009.

20

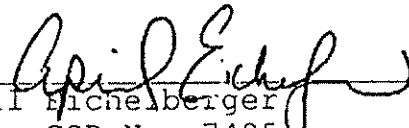
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\_\_\_\_\_  
April Eichelberger  
Texas CSR No. 7495  
Expiration Date: December 31, 2009  
HG Litigation, Firm No. 69  
2501 Oak Lawn Avenue, Suite 600  
Dallas, Texas 75219

HG LITIGATION SERVICES  
HGLITIGATION.COM

APP 259

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1 CHANGES AND SIGNATURE

2 WITNESS: Russell Tewksbury DATE: October 14, 2009

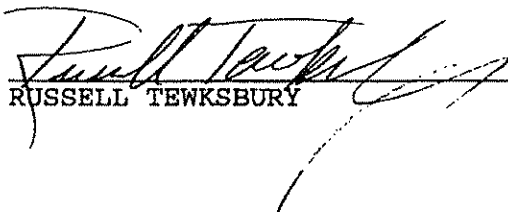
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RUSSELL TEWKSBURY

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1 I, RUSSELL TEWKSBURY, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.

4  
5   
6 RUSSELL TEWKSBURY  
7

8 THE STATE OF Florida )  
9 COUNTY OF Brevard )

10 Before me, Russell Tewksbury, on  
11 this day personally appeared RUSSELL TEWKSBURY, known to  
12 me (or proved to me under oath or through  
13 \_\_\_\_\_) (description of identity  
14 card or other document)) to be the person whose name is  
15 subscribed to the foregoing instrument and acknowledged  
16 to me that they executed the same for the purposes and  
17 consideration therein expressed.

18 Given under my hand and seal of office this  
19 3 day of November, 2009.

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NOTARY PUBLIC IN AND FOR  
THE STATE OF Florida  
COMMISSION EXPIRES: 12-26-09

